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Karl Bechtold

2003CH109

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05/01/2008

CLARIANT CORPORATION  
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EXAMINER

REDDY, KARUNA P

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



### **DETAILED ACTION**

1. This office action is in response to amendment filed on 2./14/2008. Claims 1-15 are currently pending in the application.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al (US 4, 780, 494) in view of Beilfuss et al (5, 756, 500) and Takei et al (US 6, 444, 320 B1).

The rejection is adequately set forth in paragraph 4 of office action mailed 10/25/2007.

### ***Response to Arguments***

4. Applicant's arguments filed 2/14/2008 have been fully considered but they are not persuasive. Specifically, applicant argues that (A) Beilfuss et al is directed to an aqueous dispersion having a fungicidal effect and there is no disclosure of a light stabilizer composition or a mixture of a light stabilizer and an antioxidant; (B)

Takei et al is directed to polymers for anti-reflective or fill compositions and does not provide any guidance seeking an aqueous dispersion of a light stabilizer and an antioxidant; (C) one of ordinary skill in the art having a knowledge of Hess et al and a desire to increase storage stability of its aqueous dispersion could find no motivation for deploying the teachings of Beilfuss et al; (D) one of ordinary skill in the art having a knowledge of Hess et al and a desire to increase storage stability of its aqueous dispersion could find no motivation for deploying the teachings of Takei et al; and (E) office has engaged in the use of impermissible hindsight based upon a knowledge of Applicant's specification and selectively picked various elements from non-analogous references to arrive at a conclusion of obviousness.

With respect to (A), examiner agrees that there is no disclosure of light stabilizer composition in Beilfuss et al and that is why the present rejection is set forth as a combination using Hess et al in view of Beilfuss et al and Takei et al. Court held that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to (B), examiner disagrees and attention is drawn to abstract of Takei et al wherein it is disclosed that the polymer comprises recurring monomer units containing a light attenuating compound. Furthermore, a light attenuating compound separate from the polymer can be utilized in the

composition (column 4, lines 27-29). Even if the polymer did not contain monomers containing light attenuating compound, it is noted that present rejection is set forth as a combination using Hess et al in view of Beilfuss et al and Takei et al. Court held that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to (C), attention is drawn to column 3, lines 24-48 of Beilfuss et al wherein it is taught that the stability and handling properties of dispersions containing such dispersion agents and/or solubilizers is surprisingly good even after prolonged storage under very unfavorable temperature and moisture conditions. Thus, it is apparent that Beilfuss et al teach storage stability of aqueous dispersions and this stability is attributed to the presence of solubilizers exemplified by polyethylene glycol and polypropylene glycol.

With respect to (D), attention is drawn to present claim 1 which recites oleic acid as a flow improver and Takei teaches that oleic acid is used as a flow promoting agent to increase flowability of the composition. Court held that selection of a known material based on its suitability for its intended use supports *prima facie* obviousness. *Sinclair & Carroll Co vs. Interchemical Corp.*, 325 US 327, 65 USPQ 297 (1045). Furthermore, the polymer comprises recurring monomers comprising a light attenuating compound (abstract).

With respect to (E), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KARUNA P. REDDY whose telephone number is (571)272-6566.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Examiner, Art Unit 1796

/David Wu/  
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